

## § 18.86

privileged communications, or sensitive or classified matters. The judge may admit into the record a summary or extract that omits the privileged, sensitive or classified material.

(b) *Sealing the record.* (1) On motion of any interested person or the judge's own, the judge may order any material that is in the record to be sealed from public access. The motion must propose the fewest redactions possible that will protect the interest offered as the basis for the motion. A redacted copy or summary of any material sealed must be made part of the public record unless the necessary redactions would be so extensive that the public version would be meaningless, or making even a redacted version or summary available would defeat the reason the original is sealed.

(2) An order that seals material must state findings and explain why the reasons to seal adjudicatory records outweigh the presumption of public access. Sealed materials must be placed in a clearly marked, separate part of the record. Notwithstanding the judge's order, all parts of the record remain subject to statutes and regulations pertaining to public access to agency records.

## § 18.86 Hearing room conduct.

Participants must conduct themselves in an orderly manner. The consumption of food or beverage, and rearranging courtroom furniture are prohibited, unless specifically authorized by the judge. Electronic devices must be silenced and must not disrupt the proceedings. Parties, witnesses and spectators are prohibited from using video or audio recording devices to record hearings.

## § 18.87 Standards of conduct.

(a) *In general.* All persons appearing in proceedings must act with integrity and in an ethical manner.

(b) *Exclusion for misconduct.* During the course of a proceeding, the judge may exclude any person—including a party or a party's attorney or non-attorney representative—for contumacious conduct such as refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly or eth-

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ical conduct, failure to act in good faith, or violation of the prohibition against ex parte communications. The judge must state the basis for the exclusion.

(c) *Review of representative's exclusion.* Any representative excluded from a proceeding may appeal to the Chief Judge for reinstatement within 7 days of the exclusion. The exclusion order is reviewed for abuse of discretion. The proceeding from which the representative was excluded will not be delayed or suspended pending review by the Chief Judge, except for a reasonable delay to enable the party to obtain another representative.

## § 18.88 Transcript of proceedings.

(a) *Hearing transcript.* All hearings must be recorded and transcribed. The parties and the public may obtain copies of the transcript from the official reporter at rates not to exceed the applicable rates fixed by the contract with the reporter.

(b) *Corrections to the transcript.* A party may file a motion to correct the official transcript. Motions for correction must be filed within 14 days of the receipt of the transcript unless the judge permits additional time. The judge may grant the motion in whole or part if the corrections involve substantive errors. At any time before issuing a decision and upon notice to the parties, the judge may correct errors in the transcript.

## POST HEARING

## § 18.90 Closing the record; subsequent motions.

(a) *In general.* The record of a hearing closes when the hearing concludes, unless the judge directs otherwise. If any party waives a hearing, the record closes on the date the judge sets for the filing of the parties' submissions.

(b) *Motion to reopen the record.* (1) A motion to reopen the record must be made promptly after the additional evidence is discovered. No additional evidence may be admitted unless the offering party shows that new and material evidence has become available that could not have been discovered with reasonable diligence before the record closed. Each new item must be

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designated as an exhibit under § 18.82(a) and accompanied by proof that copies have been served on all parties.

(2) If the record is reopened, the other parties must have an opportunity to offer responsive evidence, and a new evidentiary hearing may be set.

(c) *Motions after the decision.* After the decision and order is issued, the judge retains jurisdiction to dispose of appropriate motions, such as a motion to award attorney's fees and expenses, a motion to correct the transcript, or a motion for reconsideration.

### § 18.91 Post-hearing brief.

The judge may grant a party time to file a post-hearing brief with proposed findings of fact, conclusions of law, and the specific relief sought. The brief must refer to all portions of the record and authorities relied upon in support of each assertion.

### § 18.92 Decision and order.

At the conclusion of the proceeding, the judge must issue a written decision and order.

### § 18.93 Motion for reconsideration.

A motion for reconsideration of a decision and order must be filed no later than 10 days after service of the decision on the moving party.

### § 18.94 Indicative ruling on a motion for relief that is barred by a pending petition for review.

(a) *Relief pending review.* If a timely motion is made for relief that the judge lacks authority to grant because a petition for review has been docketed and is pending, the judge may:

- (1) Defer considering the motion;
- (2) Deny the motion; or

(3) State either that the judge would grant the motion if the reviewing body remands for that purpose or that the motion raises a substantial issue.

(b) *Notice to reviewing body.* The movant must promptly notify the clerk of the reviewing body if the judge states that he or she would grant the motion or that the motion raises a substantial issue.

(c) *Remand.* The judge may decide the motion if the reviewing body remands for that purpose.

### § 18.95 Review of decision.

The statute or regulation that conferred hearing jurisdiction provides the procedure for review of a judge's decision. If the statute or regulation does not provide a procedure, the judge's decision becomes the Secretary's final administrative decision.

## Subpart B—Rules of Evidence

SOURCE: 55 FR 13219, Apr. 9, 1990, unless otherwise noted.

### GENERAL PROVISIONS

### § 18.101 Scope.

These rules govern formal adversarial adjudications of the United States Department of Labor conducted before a presiding officer.

(a) Which are required by Act of Congress to be determined on the record after opportunity for an administrative agency hearing in accordance with the Administrative Procedure Act, 5 U.S.C. 554, 556 and 557, or

(b) Which by United States Department of Labor regulation are conducted in conformance with the foregoing provisions, to the extent and with the exceptions stated in § 18.1101. *Presiding officer*, referred to in these rules as *the judge*, means an Administrative Law Judge, an agency head, or other officer who presides at the reception of evidence at a hearing in such an adjudication.

### § 18.102 Purpose and construction.

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

### § 18.103 Rulings on evidence.

(a) *Effect of erroneous ruling.* Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) *Objection.* In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record,